

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, *et al.*

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION

FILE NO. 1:17-cv-2989-AT

**STATE DEFENDANTS' RESPONSE TO COALITION PLAINTIFFS'
NOTICE OF DESIGNATION OF CONSULTANTS PURSUANT TO
PROTECTIVE ORDER**

In the midst of preparing for the hearing to be held this week, Coalition Plaintiffs unilaterally and without consultation with State Defendants filed a “Notice” designating several individuals as “consultants” for purposes of the Protective Order, so that those individuals can review Attorneys’ Eyes Only materials produced by State Defendants. [Doc. 867]. The proposed designation would allow these individuals to begin reviewing AEO material on September 9.

This proposed notice violates the Protective Order and this Court should deny the effort to change its terms. In framing the original Protective Order, Coalition Plaintiffs sought to have Ms. Marks, among others,

designated as able to see AEO materials. This Court considered and denied that request. *See* June 28, 2019 Transcript at 34:14-36:5 (“let me just say I have never heard of an attorney's eyes only that was not attorney’s eyes only or with their expert on the other side of it”). This Court should not allow Coalition Plaintiffs to make an end-run around the Protective Order by merely posting a notice on the docket, especially when Ms. Marks has a history of posting discovery documents publicly. *See* Tweet from M. Marks, attached as Ex. A.

In addition, State Defendants learned last week that Coalition Plaintiffs were utilizing individuals to review documents designated “confidential” who were not parties, but were designated as “representatives.” Those individuals were given access to a group of documents that included both confidential and AEO-designated documents, although counsel for Coalition Plaintiffs stated that they were instructed not to review documents designated AEO. *See* Email chain from August 30, 2020, attached as Ex. B. State Defendants did not raise this issue to the Court after Coalition Plaintiffs’ representations, but it is relevant to their latest attempt to expand the field of those who can review highly confidential discovery documents in this case. If Coalition Plaintiffs believe a document was improperly designated AEO, they should bring that issue to State Defendants, not

attempt to have a variety of “committed activists” review those documents, as this Court earlier noted. June 28, 2019 Tr. at 34:18.

Coalition Plaintiffs’ decision to distract the Court and the parties with this non-issue on the eve of a hearing is a waste of resources for all involved and should be denied by this Court.

Respectfully submitted this 7th day of September, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing **STATE DEFENDANTS' RESPONSE TO COALITION PLAINTIFFS' NOTICE OF DESIGNATION OF CONSULTANTS PURSUANT TO PROTECTIVE ORDER** has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Bryan P. Tyson
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